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Herbalife International, Inc., and Herbalife
18 International of America, Inc.

19
20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
22

23 MICHAEL LAVIGNE, *et al.*,
24 Plaintiffs,
25 vs.
26 HERBALIFE LTD., *et al.*,
27 Defendants.

CASE NO. 2:18-cv-07480-JAK (MRWx)
**STIPULATED PROTECTIVE
ORDER**
Magistrate Judge Michael R. Wilner

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, Plaintiffs and Defendants Herbalife Nutrition Ltd. (fka
7 Herbalife Ltd.), Herbalife International, Inc., and Herbalife International of
8 America, Inc. (collectively, “Herbalife”) hereby stipulate to and petition the Court to
9 enter the following Stipulated Protective Order. The parties acknowledge that this
10 Order does not confer blanket protections on all disclosures or responses to
11 discovery and that the protection it affords from public disclosure and use extends
12 only to the limited information or items that are entitled to confidential treatment
13 under the applicable legal principles. The parties further acknowledge, as set forth
14 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
15 file confidential information under seal; Civil Local Rule 79-5 sets forth the
16 procedures that must be followed and the standards that will be applied when a party
17 seeks permission from the court to file material under seal.

18 1.2 GOOD CAUSE STATEMENT

19 This putative class action involves claims arising out of Plaintiffs’ attendance
20 at Herbalife events and alleged misrepresentations about the nature of Herbalife’s
21 business opportunity made at those events. Plaintiffs have propounded discovery
22 requests that seek, among other things, video and audio recordings of Herbalife
23 events, minutes from meetings of Herbalife’s Board of Directors regarding events,
24 fees paid to Herbalife distributors to speak at events, documents reflecting event
25 attendance records, documents reflecting membership in certain business
26 committees, tax and bank account information, and communications discussing
27 Herbalife’s events. Notwithstanding Herbalife’s objections to the production of
28 much of this material, Herbalife asserts that such materials consist of, among other

1 things, information regarding confidential business strategies and policies; sensitive
 2 financial information; information implicating the privacy rights of third parties;
 3 and/or information which may be privileged or otherwise protected from disclosure
 4 under state or federal statutes, court rules, case decisions, or common law. Nothing
 5 in this Good Cause Statement or Stipulated Protective Order shall be construed as an
 6 agreement by Plaintiffs that any specific documents or categories of documents are
 7 properly considered “Confidential Information” as defined herein.

8 It is the intent of the parties that information will not be designated as
 9 confidential for tactical reasons and that nothing be so designated without a good
 10 faith belief that it has been maintained in a confidential, non-public manner. It also
 11 is the intent of the parties that information will not be designated as confidential
 12 unless there is good cause as to why such information should not be part of the
 13 public record of this case.

14 2. DEFINITIONS

15 2.1 Action: The above-captioned action styled as *Michael Lavigne,*
 16 *et al. v. Herbalife Ltd.*, Case No. 2:18-cv-07480-JAK (C.D. Cal.).

17 2.2 Challenging Party: A Party or Non-Party that challenges the
 18 designation of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: Information
 20 (regardless of how it is generated, stored or maintained) or tangible things that
 21 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
 22 above in the Good Cause Statement.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as
 24 well as their support staff).

25 2.5 Designating Party: A Party or Non-Party that designates
 26 information or items that it produces in disclosures or in responses to discovery as
 27 “CONFIDENTIAL.”

28 2.6 Disclosure or Discovery Material: All items or information,

1 regardless of the medium or manner in which it is generated, stored, or maintained
2 (including, among other things, testimony, transcripts, and tangible things), that are
3 produced or generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: A person with specialized knowledge or experience in a
5 matter pertinent to the litigation who has been retained by a Party or its counsel to
6 serve as an expert witness or as a consultant in this Action.

7 2.8 House Counsel: Attorneys who are employees of a party to this
8 Action. House Counsel does not include Outside Counsel of Record or any other
9 outside counsel.

10 2.9 Non-Party: Any natural person, partnership, corporation,
11 association, or other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: Attorneys who are not employees of
13 a party to this Action but are retained to represent or advise a party to this Action
14 and have appeared in this Action on behalf of that party or are affiliated with a law
15 firm which has appeared on behalf of that party, and includes support staff.

16 2.11 Party: Any party to this Action, including all of its officers,
17 directors, employees, consultants, retained experts, and Outside Counsel of Record
18 (and their support staffs).

19 2.12 Producing Party: A Party or Non-Party that produces Disclosure
20 or Discovery Material in this Action.

21 2.13 Professional Vendors: Persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)
24 and their employees and subcontractors.

25 2.14 Protected Material: Any Disclosure or Discovery Material that is
26 designated as "CONFIDENTIAL."

27 2.15 Receiving Party: A Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 Any use of Protected Material at trial will be governed by the orders of the
8 trial judge. This Order does not govern the use of Protected Material at trial.

9 4. DURATION

10 Even after final disposition of this litigation, the confidentiality obligations
11 imposed by this Order will remain in effect until a Designating Party agrees
12 otherwise in writing or a court order otherwise directs. Final disposition will be
13 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
14 or without prejudice; and (2) final judgment herein after the completion and
15 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
16 including the time limits for filing any motions or applications for extension of time
17 pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for
20 Protection: Each Party or Non-Party that designates information or items for
21 protection under this Order must take care to limit any such designation to specific
22 material that qualifies under the appropriate standards. The Designating Party must
23 designate for protection only those parts of material, documents, items, or oral or
24 written communications that qualify so that other portions of the material,
25 documents, items, or communications for which protection is not warranted are not
26 swept unjustifiably within the ambit of this Order.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations
28 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (*e.g.*, to unnecessarily encumber the case development process or to impose
2 unnecessary expenses and burdens on other parties) may expose the Designating
3 Party to sanctions.

4 If it comes to a Designating Party's attention that information or items that it
5 designated for protection do not qualify for protection, that Designating Party must
6 promptly notify all other Parties that it is withdrawing the inapplicable designation.

7 5.2 Manner and Timing of Designations. Except as otherwise
8 provided in this Order (*see, e.g.*, second paragraph of Section 5.2(a) below), or as
9 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
10 protection under this Order must be clearly so designated before the material is
11 disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (*e.g.*, paper or electronic
14 documents, but excluding transcripts of depositions or other pretrial or trial
15 proceedings), that the Producing Party affix at a minimum, the legend
16 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
17 contains protected material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (*e.g.*, by making appropriate markings in the margins).

20 A Party or Non-Party that makes original documents available for inspection
21 need not designate them for protection until after the inspecting Party has indicated
22 which documents it would like copied and produced. During the inspection and
23 before the designation, all of the material made available for inspection will be
24 deemed "CONFIDENTIAL." After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine which
26 documents, or portions thereof, qualify for protection under this Order. Then, before
27 producing the specified documents, the Producing Party must affix the
28 "CONFIDENTIAL legend" to each page that contains Protected Material.

1 If only a portion or portions of the material on a page qualifies for protection,
 2 the Producing Party also must clearly identify the protected portion(s) (e.g., by
 3 making appropriate markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identify
 5 the Disclosure or Discovery Material on the record, before the close of the
 6 deposition all protected testimony.

7 (c) for information produced in some form other than documentary and for
 8 any other tangible items, that the Producing Party affix in a prominent place on the
 9 exterior of the container or containers in which the information is stored the legend
 10 “CONFIDENTIAL.” If only a portion or portions of the information warrants
 11 protection, the Producing Party, to the extent practicable, will identify the protected
 12 portion(s).

13 5.3 Inadvertent Failures to Designate. If timely corrected, an
 14 inadvertent failure to designate qualified information or items does not, standing
 15 alone, waive the Designating Party’s right to secure protection under this Order for
 16 such material. Upon timely correction of a designation, the Receiving Party must
 17 make reasonable efforts to assure that the material is treated in accordance with the
 18 provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge
 21 a designation of confidentiality at any time that is consistent with the Court’s
 22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party will initiate the dispute
 24 resolution process (and, if necessary, file a discovery motion) under Local
 25 Rule 37.1, *et seq.*

26 6.3 The burden of persuasion in any such challenge proceeding will
 27 be on the Designating Party. Frivolous challenges, and those made for an improper
 28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other

parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties will continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (d) the Court and its personnel;

3 (e) court reporters and their staff;

4 (f) professional jury or trial consultants, mock jurors, and

5 Professional Vendors to whom disclosure is reasonably necessary for this Action

6 and who have signed the “Acknowledgment and Agreement to Be Bound”

7 (Exhibit A);

8 (g) the author or recipient of a document containing the

9 information or a custodian or other person who otherwise possessed or knew the

10 information;

11 (h) during their depositions, witnesses, and attorneys for

12 witnesses, in the Action to whom disclosure is reasonably necessary provided:

13 (1) the deposing party requests that the witness sign the form attached as Exhibit A

14 hereto; and (2) they will not be permitted to keep any confidential information

15 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

16 unless otherwise agreed by the Designating Party or ordered by the court. Pages of

17 transcribed deposition testimony or exhibits to depositions that reveal Protected

18 Material may be separately bound by the court reporter and may not be disclosed to

19 anyone except as permitted under this Stipulated Protective Order; and

20 (i) any mediator or settlement officer, and their supporting

21 personnel, mutually agreed upon by any of the parties engaged in settlement

22 discussions.

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED

24 PRODUCED IN OTHER LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation

26 that compels disclosure of any information or items designated in this Action as

27 “CONFIDENTIAL,” that Party must:

28 (a) promptly notify in writing the Designating Party. Such

1 notification will include a copy of the subpoena or court order;

2 (b) promptly notify in writing the party who caused the subpoena or
3 order to issue in the other litigation that some or all of the material covered by the
4 subpoena or order is subject to this Protective Order. Such notification will include a
5 copy of this Stipulated Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected.

8 If the Designating Party timely seeks a protective order, the Party served with
9 the subpoena or court order will not produce any information designated in this
10 action as “CONFIDENTIAL” before a determination by the court from which the
11 subpoena or order issued, unless the Party has obtained the Designating Party’s
12 permission. The Designating Party will bear the burden and expense of seeking
13 protection in that court of its confidential material and nothing in these provisions
14 should be construed as authorizing or encouraging a Receiving Party in this Action
15 to disobey a lawful directive from another court.

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced
19 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
20 information produced by Non-Parties in connection with this litigation is protected
21 by the remedies and relief provided by this Order. Nothing in these provisions
22 should be construed as prohibiting a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request,
24 to produce a Non-Party’s confidential information in its possession, and the Party is
25 subject to an agreement with the Non-Party not to produce the Non-Party’s
26 confidential information, then the Party will:

27 (1) promptly notify in writing the Requesting Party and the
28 Non-Party that some or all of the information requested is subject to

1 a confidentiality agreement with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the
3 Stipulated Protective Order in this Action, the relevant discovery request(s), and
4 a reasonably specific description of the information requested; and

5 (3) make the information requested available for inspection by
6 the Non-Party, if requested.

7 (c) If the Non-Party fails to seek a protective order from this court
8 within 14 days of receiving the notice and accompanying information, the Receiving
9 Party may produce the Non-Party's confidential information responsive to the
10 discovery request. If the Non-Party timely seeks a protective order, the Receiving
11 Party will not produce any information in its possession or control that is subject to
12 the confidentiality agreement with the Non-Party before a determination by the
13 court. Absent a court order to the contrary, the Non-Party will bear the burden and
14 expense of seeking protection in this court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

16 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
17 Protected Material to any person or in any circumstance not authorized under this
18 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
19 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
20 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
21 persons to whom unauthorized disclosures were made of all the terms of this Order,
22 and (d) request such person or persons to execute the "Acknowledgment and
23 Agreement to Be Bound" that is attached hereto as Exhibit A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
25 OTHERWISE PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
2 procedure may be established in an e-discovery order that provides for production
3 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
4 (e), insofar as the parties reach an agreement on the effect of disclosure of
5 a communication or information covered by the attorney-client privilege or work
6 product protection, the parties may incorporate their agreement in the stipulated
7 protective order submitted to the court.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right
10 of any person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of
12 this Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal
17 any Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in
26 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving

1 Party must submit a written certification to the Producing Party (and, if not the same
2 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
3 (by category, where appropriate) all the Protected Material that was returned or
4 destroyed and (2) affirms that the Receiving Party has not retained any copies,
5 abstracts, compilations, summaries or any other format reproducing or capturing any
6 of the Protected Material. Notwithstanding this provision, Counsel are entitled to 13
7 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
8 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
9 reports, attorney work product, and consultant and expert work product, even if such
10 materials contain Protected Material. Any such archival copies that contain or
11 constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

13 Any willful violation of this Order may be punished by civil or criminal
14 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
15 authorities, or other appropriate action at the discretion of the Court.

16
17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18
19 *Local Rule 5-4.3.4(a)(2)(i) Compliance: Filer attests that all other*
20 *signatories listed concur in the filing's content and have authorized this filing.*
21

22 DATED: April 11, 2019

Mortgage Recovery Law Group LLP

23 By: /s/ Paul A. Levin

24 Paul A. Levin

25 Attorneys for Plaintiffs
26
27
28

1 DATED: April 11, 2019

Etan Mark
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4 By: /s/ Etan Mark

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Nutrition Ltd. (fka Herbalife Ltd.),
Herbalife International, Inc., and Herbalife
International of America, Inc.

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21 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

22
23
24 DATED: April 11, 2019

25 /s/ Judge Wilner

26 HON. MICHAEL R. WILNER
27 United States Magistrate Judge
28

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on **[date]** in the case of **[insert case name and number]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ **[full name]** of _____ **[full address and telephone number]** as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where signed: _____

Printed Name: _____

Signature: _____